

STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE

COMMENT/RESPONSE FORM

This comment and response form pertains to the Second Discussion Level, and to the public testimony portion of the subsequent work session. Board Members had no comments or questions at Second Discussion Level, and no testimony on the draft amendments was offered at the public session.

Topic: Controversies and Disputes Code

Meeting Date: March 1, 2006

Code Citation: N.J.A.C. 6A:3

Level: Proposal

Division: Deputy Commissioner

Completed by: Controversies & Disputes

SUMMARY OF COMMENTS AND RESPONSES:

NONE

**Proposal Level
March 1, 2006**

TO: Members, State Board of Education

FROM: Lucille E. Davy
Acting Commissioner

SUBJECT: N.J.A.C. 6A:3, Controversies and Disputes

REASON
FOR ACTION: Amendments Relating to Filing Procedures for
Workers' Compensation and Tenure Matters

SUNSET DATE: March 10, 2010

PROJECTED
SUNSET DATE: March 10, 2010

Summary

The Department of Education is proposing to amend N.J.A.C. 6A:3, Controversies and Disputes, in order to make further adjustments to the provisions in that chapter pertaining to 1) the filing deadline for sick leave benefit claims arising from work-related injuries and 2) the filing of tenure charges of inefficiency against chief school administrators. In the first instance, the Department proposes to create an exception to N.J.A.C. 6A:3-1.3(i), the rule establishing the filing deadline for appeals to the Commissioner, so that, in the case of most claims for sick leave benefits based on a work-related injury, the 90-day filing period would run from the date of the underlying Workers' Compensation determination on which the claim is based rather than from receipt of notice of the district board of education action that had the effect of denying benefits. In the second, the Department proposes to amend N.J.A.C. 6A:3-5.1(c) to clarify how the rules regarding the filing and certification of inefficiency charges apply to charges against chief school administrators.

Claims for Sick Leave Based on Work-Related Injury

Under N.J.S.A. 18A:30-2.1, school employees who have been accidentally injured during the course of performing their duties are entitled to full salary for the period of absence resulting from such injury for up to one calendar year, without charge to annual or accumulated sick leave. Where claims under this statute are filed with the Commissioner as contested cases, in the vast majority of instances, the Commissioner may not exercise jurisdiction over them until the Division of Workers' Compensation (DWC) has made a determination that the underlying injury did, in fact, arise out of and in the course of the claimant's employment, since the Division, not the Commissioner, has primary jurisdiction over the statutes (N.J.S.A. 34:15-1 et seq.) under which such determinations are made. The only exceptions are those instances where the employee's absence is insufficiently long to be eligible to apply for Workers' Compensation benefits (seven days or less pursuant to N.J.S.A. 34:15-14) or where a Workers' Compensation claimant settles his or her case before the DWC without a determination of work-related causation (so-called "Section 20" settlements pursuant to N.J.S.A. 34:15-20); in all other cases, a Workers' Compensation determination is a necessary prerequisite to the Commissioner's consideration of any claim for benefits under N.J.S.A. 18A:30-2.1.

For this reason, Commissioner decisions prior to 1995 generally suggested that petitions seeking to initiate a contested case under N.J.S.A. 18A:30-2.1 need not be filed until after the DWC had ruled on the question of whether the underlying injury was work-related. However, in 1995, in Verneret v. Board of Education of the City of Elizabeth, Union County, 95 N.J.A.R. 2d (EDU) 134, the State Board of Education clarified that the regulatory limitation period generally applicable to the filing of petitions of appeal (then codified at N.J.A.C. 6:24-1.2(c), now N.J.A.C. 6A:3-1.3(i)) required a petition for benefits under N.J.S.A. 18A:30-2.1 to be filed within 90 days of notice of the district board action that had the effect of denying benefits, regardless of the status of any pending or anticipated Workers' Compensation claim, even where the Commissioner must refrain from exercising jurisdiction until the DWC ruled on the question of causation. In response to this ruling, the Department adopted the procedure it has used ever since: requiring that any petition under N.J.S.A. 18A:30-2.1 be filed within 90 days of the district board action denying benefits, directing an answer by the board, then transmitting the matter to the Office of Administrative Law (OAL), in the vast majority of cases with the request that it be held in abeyance pending DWC determination or settlement of the underlying claim.

While this procedure is consistent with the 90-day filing rule and with the Verneret decision based upon it, its practical effect, because of the length of time Workers' Compensation determinations can take, is to create a substantial number of cases which require initial filings on the part of both employees and district boards, and administrative processing on the part of the Department and the OAL, only to sit idle on the Commissioner-OAL case docket for months, even years, and then likely become moot without further proceedings. This occurs because the great majority of N.J.S.A. 18A:30-2.1 cases settle during DWC proceedings or are eventually withdrawn or abandoned by the parties, either because the DWC finds that an injury was not work-

related, in which case the petitioner is unable to sustain the concomitant education law claim, or because Workers' Compensation benefits were awarded and the employing Board then settles or withdraws its opposition to the claim before the Commissioner. Either way, the education matters, although long since filed, docketed and answered, result in no subsequent proceedings before the Commissioner or the OAL other than those ministerial actions necessary to close the case file.

Because cases are transmitted to the OAL at an early stage in the adjudicative process, a substantial portion of the administrative burden of maintaining and monitoring them while they are in abeyance rests with that agency. When the State Board, as part of the readoption with amendments of the Controversies and Disputes chapter in March 2005, codified the Department's longstanding practice in the interest of clear public notice, the OAL's awareness of its burden was heightened and the agency inquired about the possibility of an alternative response to the requirements of Verneret. Upon reflection, the Department did not see any reason why a limited exception to the 90-day rule could not be created by a specific amendment to N.J.A.C. 6A:3-1.3(i) addressing only those cases arising under N.J.S.A. 18A:30-2.1; indeed, the Department concluded that such an approach would not only eliminate an unnecessary administrative burden on both the Department and the OAL, but also reduce filing burdens on school employees and district boards with no negative effect on any party's ability to make or defend against a claim. Therefore, the Department is proposing to amend its rules for the filing of contested cases to provide that the 90-day limitation period for most petitions seeking benefits under N.J.S.A. 18A:30-2.1 will run from the date of the DWC determination that either finds the employee to have been injured in the performance of duty or settles the compensation claim without a determination of work-related causation, while retaining the current deadline for those few cases which fall within the exception to the requirement for a DWC determination prior to consideration by the Commissioner.

Tenure Charges of Inefficiency Against Chief School Administrators

Although N.J.S.A. 18A:17-20.2 clearly provides for the bringing of tenure charges of inefficiency against chief school administrators (CSAs), the long-standing rules detailing the procedures for the filing of inefficiency charges at the local level were written in a manner that appeared to reference only staff subject to administrative evaluation, that is, below the level of CSA. Although these rules had been in place for many years with their inferential applicability to CSAs understood and accepted, recent litigation raised such applicability as an issue. As a result, the Department had proposed, as part of the readoption with amendments of the Controversies and Disputes chapter in March 2005, technical amendments to N.J.A.C. 6A:3-5.1(c)1, 4, 5 and 6 so as to clarify that, under the existing regulatory framework for the filing and certification of inefficiency charges, the CSA's status as the district board of education's highest ranking administrator did not preclude the filing of inefficiency charges against him or her by the appropriate supervisor/evaluator and the subsequent certification of such charges to the Commissioner.

However, during the public comment process, concern was expressed that, as written, the proposed amendments were not technical and clarifying as stated, but actually effectuated a major change in law and policy. Specifically, by appearing to permit individual board members to file charges of inefficiency against a chief school administrator independent of any action by the full board, the proposed amendments were considered contrary to the established administrative/evaluative framework for CSAs as set forth at N.J.A.C. 6A:32-4.3 in the School District Operations chapter (formerly N.J.A.C. 6:3-2.2 in the School Districts chapter), and the existing regulatory framework for district-level determination of inefficiency, as well as to the fundamental principle of board action as a collective body. In its response to these comments, the Department stressed that, as indicated by its characterization of the proposed amendments as technical/clarifying and by the rules' internal references to existing supervisory frameworks and evaluative processes, it had no intent whatsoever to change existing practice or law by permitting board members to file charges of inefficiency in their capacity as individuals rather than at the direction of the majority of the full district board consistent with the provisions of N.J.A.C. 6A:32-4.3 in the School District Operations chapter (formerly N.J.A.C. 6:3-2.2 in the School Districts chapter). However, addition of explicit language clarifying that board members may file inefficiency charges against a CSA only upon majority vote of the full district board constituted a change too substantial, under OAL rulemaking standards, to be made without further opportunity for public comment. Therefore, in March 2005 the State Board acted on the Department's recommendation that the subsection of rules in question be readopted without substantive change and that procedures for the filing of tenure charges of inefficiency against CSAs be re-addressed in a separate rule proposal, which is presented herein.

The following summarizes the content of each section proposed for amendment:

Subchapter 1. General Provisions

N.J.A.C. 6A:3-1.3 Filing and service of petition

This section prescribes the procedures for filing a petition of appeal to initiate a contested case before the Commissioner. The Department proposes to amend N.J.A.C. 6A:3-1.3(c) to delete language requiring a petitioner claiming sick leave benefits due to work-related injury pursuant to N.J.S.A. 18A:30-2.1 to state whether a claim has been or will be filed with the Division of Workers' Compensation (DWC), and to require instead that such petitioners include a copy of the ruling or settlement agreement issued by the DWC with respect to the injury underlying their claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the DWC makes a determination of work-related injury. The Department further proposes to amend N.J.A.C. 6A:3-1.3(i)1 to require that a petitioner seeking benefits under N.J.S.A. 18A:30-2.1 must file a claim with the Commissioner within 90 days of the date of the Workers' Compensation determination that either finds the employee to have been injured in the performance of duty or settles the compensation claim without a determination of work-related causation, unless the

underlying claim constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the DWC makes a determination of work-related injury, in which case the petition must be filed within 90 days of the district Board action denying benefits. The proposed amendment to N.J.A.C. 6A:3-1.3(i)1 also deletes the existing provision that, upon receipt of the answer to a petition claiming benefits based on a workers' compensation claim, the contested case will be transmitted to the Office of Administrative Law with the request that it be held in abeyance pending determination by the DWC.

Subchapter 5. Charges Under the Tenure Employees' Hearing Act

N.J.A.C. 6A:3-5.1 Filing of written charges and certificate of determination

This section prescribes the requirements for the filing and certification of charges against tenured school employees, with subsection (c) pertaining specifically to charges of inefficiency. Amendments are proposed to N.J.A.C. 6A:3-5.1(c)1, 4 and 5 to clarify how existing regulatory procedures are applicable to inefficiency charges filed against a chief school administrator (CSA). The Department proposes to amend paragraph (c)1 to provide that charges of inefficiency against a CSA are to be filed, along with the required statement of evidence, by a designated board member(s) upon the direction of the district board as ascertained by majority vote of the full board. An amendment is proposed to paragraph (c)4 to add a reference to the existing regulatory supervisory/evaluative process for CSAs and to update the current citation for other tenured teaching staff members. An amendment is proposed to paragraph (c)5 to provide that, following the CSA's opportunity to correct identified inefficiencies, the district board shall determine by majority vote of the full board what charges, if any, have not been corrected. Finally, an amendment is proposed to paragraph (c)6 to reference board determinations regarding CSAs, in addition to administrative determinations regarding other tenured teaching staff members.

Social Impact

The primary impact of the proposed amendments will be upon district boards of education and public school employees. One set of proposed amendments will provide an administratively efficient mechanism for the hearing of education law claims arising from a school employee's absence due to work-related injury, without compromising either the employee's ability to make such claims or the district board's ability to defend against them. The other will provide clarity on an aspect of the procedural rules for the filing of tenure charges that has caused confusion in the past.

Economic Impact

The proposed amendments will impose no economic burden on parties in contested cases. In fact, the amendments pertaining to work-related injury cases will likely result in efficiencies and cost savings at both the State and local levels through the elimination of unnecessary legal filings.

Federal Standards Statement

The proposed amendments will not be inconsistent with or exceed any Federal standards or requirements, since no such standards or requirements address the mechanisms prescribed in this chapter.

Jobs Impact

The proposed amendments will result in neither the generation nor the loss of jobs in public school districts or the State.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments do not impose recording, recordkeeping or further compliance requirements on entities qualifying as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Their sole impact is on district boards of education and their employees.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:3-1.3 Filing and service of petition of appeal

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers where available) of the petitioner and each respondent, and the original and two copies of the petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner which have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are pro se, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices and other communications prior to the agency's determination that the matter is a contested case. In subsequent proceedings, however, if petitioners are acting as a group, the group shall comply with applicable rules of the OAL regarding representation.

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a petition is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

3. A petitioner shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a board of education under the Public School Contracts Law (N.J.S.A. 18A:18A), the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall [indicate in the petition whether a claim has been filed, or will be filed within the requisite statutory time frame, with the Division of Workers' Compensation] include a copy of the ruling or settlement agreement issued by the Division of Workers' Compensation with respect to the injury underlying the claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division makes a determination of work-related injury.

(d) A petitioner claiming that his or her employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal factual basis for such allegation(s), consistent with New Jersey Court Rules at R.4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation

Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department's Office of Special Education Programs (OSEP).

1. If a petition appears to raise, in addition to issues within scope of the Commissioner's authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the Bureau of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7(f), except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, it may, after notice to the parties and opportunity to be heard, be transferred to the OSEP in accordance with the provisions of N.J.A.C. 6A:3-1.10(b).

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings and any other pertinent papers are forwarded to the Commissioner, c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the form of a duly conformed Petition of Appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Division of Youth and Family Services (DYFS), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all DYFS records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DYFS in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

(h) Proof of service shall be in the form of one of the following:

1. An acknowledgement of service signed by the attorney or the attorney's designee for each respondent, or signed and acknowledged by the respondent or agent thereof, indicating the address at which each respondent was served;

2. An affidavit of the person making service, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation, indicating the address at which each respondent was served;

3. A certification indicating the address at which each respondent was served and meeting the requirements of New Jersey Court Rules at R.1:4-4(b); or

4. A copy of petitioner's receipt for certified mailing or delivery by messenger to each respondent. The return receipt card ("green card") is not required for proof of service by certified mailing.

(i) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall file a petition within 90 days of the date of the determination by the Division of Workers' Compensation that either finds the employee to have sustained a compensable injury or settles the compensation claim without a determination of work-related causation, unless the claim constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division has made a determination on the underlying injury, in which case the petition must be filed within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits. [Upon filing of the district board of

education's answer to the petition, the Commissioner shall, where a workers' compensation claim has been or is intended to be filed, transmit the matter to the OAL with the request that the petition be held in abeyance pending determination by the Division of Workers' Compensation as to whether the underlying injury is work-related.]

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service to the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, P.O. Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this section, but to the attention of the appropriate section of the Division of Law.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6A:3-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred before the Commissioner against an employee of a district board of education or of a State-operated school district pursuant to the Tenure Employees' Hearing Act, N.J.A.C. 6A:3-1.3 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education or the State district superintendent shall file the original and two copies of the written charges and the required certificate of determination with the Commissioner together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the

employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between a district board of education and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the secretary of the district board of education or the State district superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education or the State district superintendent a written statement of

position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

5. The district board of education or the State district superintendent shall, within three working days, provide written notification of the determination to the employee against whom the charge has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

6. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals in State-operated school districts, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath. In the event the charges are against the chief school administrator of a district board of education, they shall be filed, along with the required statement of evidence, by a designated board member(s) upon the direction of the district board as ascertained by majority vote of the full board.

2. The district board of education, through its board secretary, or the State district superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, or the State district superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the district board of education or State district superintendent, the district

board of education or the State district superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. [6:3-4.3(f)] 6A:32-4.3 or 4.4, to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90-day period for improvement, or such longer period as may be provided by the district board of education or the State district superintendent, the administrator(s) responsible for bringing such charges to the attention of the district board of education or the State district superintendent shall notify the district board of education or the State district superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a chief school administrator of a district board of education, the district board shall determine by majority vote of the full board what charges, if any, have not been corrected.

6. The district board of education or the State district superintendent, upon receipt of the written notification or upon the district board's determination in the case of a chief school administrator, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90-day period, or such longer period as may be provided by the district board of education or the State district superintendent, to the notification of the employee by the district board of education or the State district superintendent shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.